

SECTION 2

2.10 GUIDANCE FOR REQUIRED NOTICE OF CONTINUING COMPLIANCE

DATCP requirements: Since 2006, DATCP has imposed the following requirement on landowners seeking four years of DATCP cost-sharing for nutrient management plans: they must agree to follow the ATPC 50.04 nutrient management standard after the end of their four-year cost-share contracts. This agreement results in a continuing compliance responsibility for landowners and their successors in interest, and means that they are responsible for meeting the nutrient management standard for as long as the affected land is cropped. To secure a landowner's continuing compliance, DATCP requires that counties follow a two-step process before cost-sharing is provided for a nutrient management plan. First, a county must provide a written notice to landowners prepared in accordance with the guidelines listed below. Second, the county must have landowners initial cost-share contracts to acknowledge receipt of the required notice regarding their continuing compliance responsibilities.

As a minimum requirement for DATCP reimbursement, a county must submit a nutrient management cost-share contract that is properly initialed to acknowledge the landowner's receipt of the notice regarding continuing compliance. As additional proof of a landowner's continuing compliance responsibilities, a county may choose to have the landowner sign the notice, and retain the signed notice in its files. If a county provides less than the legally-required cost-sharing of \$28 per acre, the county must have the landowner sign a separate written notice prepared according to these guidelines, and submit the signed notice to DATCP to obtain reimbursement.

Optional use of the notice: Before 2002, a DATCP cost-share contract established the full extent of a landowner's responsibilities to install and maintain a cost-shared practice. With the advent of the state agricultural performance standards in NR 151, landowners paid to install practice with state funds could take on continuing obligations to maintain the practice without receiving further cost-sharing. Sec. ATPC 50.08(5) identifies the exemptions to state cost-share requirements that enable a county to require a landowner to maintain a conservation practice without further cost-sharing so long as the conservation practice was adequately cost-shared.

While DATCP elected to require continuing compliance in connection with nutrient management cost-sharing, counties may require continuing compliance with other cost-shared practices if the requirements of ATPC 50.08 have been satisfied. Counties may use notices of continuing compliance where DATCP bond revenue is used to cost-share a practice to secure compliance with a performance standard. For example, cost-sharing for a newly constructed storage facility may give rise to a continuing obligation to comply with the performance standard after the 10-year maintenance period. A notice is appropriate for cost-shared practices such as grassed waterways and riparian buffers only if the practice achieves compliance with a current state performance standard. For example, a notice would be appropriate if a grassed waterway was required to control nutrient runoff and achieve compliance with the NR 151 standard related to nutrient management. NR 151 may impose independent requirements for compliance, and counties may wish to include these in any notice they issue.

What should the notice contain: At a minimum, the notice should identify the practices being installed, the amounts paid for the practices, the sources of cost-share payments, the number of years covered by cost-share payments, the performance standard that is implicated, and other details the county deems necessary. A county may have all the parties acknowledge receipt of the notice by placing their initials on the cost-share contract at section 2.A.9 and signing the notice itself if the county requires this. Attached is a list of possible elements to cover in a notice.

Counties should seek advice from their corporation counsel regarding the legal sufficiency of the notices to ensure that they can pursue enforcement if required at a later date.

Possible Elements in a “Notice of Compliance Requirements”

1. You are being offered x dollars in cost-share funds to [have and follow a nutrient management plan for x acres] [or list other appropriate practices as provided in the contract] (strike the one that does not apply) located in _____. The specific funds and their sources are listed: x dollars from DATCP, x dollars from NRCS, x dollars from DNR (strike as appropriate).
2. The conservation practices installed under this cost-share contract will result in compliance with the following performance standards: NR 151.02 Sheet, rill and wind erosion; NR 151.05 Manure storage facilities; NR 151.06 Clean water diversions; NR 151.07 Nutrient management; NR 151.08 Manure management prohibitions (Strike all that do not apply)
3. If you voluntarily agree to accept this cost-share offer, you will be required to sign a cost-share contract that specifies your rights and responsibilities. If you are not the landowner, the landowner will also be required to sign the contract.
4. The cost-share contract specifies a maintenance period for each cost-shared practice. The maintenance period for practices such as manure storage is 10 years. “Soft” practices such as nutrient management have shorter maintenance periods; specifically, they must be maintained for each year cost-share funds are provided, as specified in Section 3 of the cost-share contract. Cost-sharing for nutrient management cannot exceed four years.

Skip paragraph 5 if no “soft” practices are cost-shared and subject to notice requirements

5. You will be required to maintain your [nutrient management plan][other “soft” practice noted above](strike practices that do not apply), beyond the term specified in the contract because: (Strike all that do not apply)
 - a. You received the cost-share amount required under ATPC 50.08 by accepting four years of payments at the flat rates identified in the ATPC 50.42(2), or a higher cost-share payment under ATPC 50.42(1) if this is applicable. In the case of nutrient management, a landowner has a continuing compliance obligation if the contract provides for an upfront DATCP payment of at least \$28 per acre (\$7 per acre for four years), or a higher amount if warranted using calculations under ATPC 50.08 and 50.42. (Note: County should adjust last sentence to fit the circumstances of the cost-share contract and “soft” practice involved.)
 - b. You received DATCP cost-share funds combined with cost-share payments from other sources equal to the amount required under ATPC 50.08; namely, four years of payments at the flat rates identified in the ATPC 50.42(2), or a higher cost-share payment under ATPC 50.42(1) if this is applicable. For example, if a landowner receives DATCP cost-sharing of \$21 per acre for nutrient management, the landowner would have a continuing obligation to meet the state nutrient management standard if the landowner also received a separate payment of \$7 per acre from the county, increasing the total payment under the contract to at least \$28 per acre (\$7 per acre for four years).
 - c. You knowingly and voluntarily accepted less than the maximum rate authorized under ATPC 50.42(2) to install and maintain the practice for a four-year period. The 4-years of cost-sharing negotiated for the practices listed above (regardless of the rates provided) meets the requirements of ATPC 50.08, and obligates a landowner to maintain the practice beyond the term of the contract, without further cost-sharing, to meet the performance standard identified in 2 above.

Skip paragraph 6 if no “hard” practices are cost-shared and subject to notice requirements.

6. You will be required to maintain the “hard ” practice noted above, beyond the 10-year term specified in the contract because: (Strike all that do not apply)
- a. You received DATCP cost-share funds to install and maintain a practice for 10 years at the maximum level authorized under ATCP 50.42. This meets the requirements under ATCP 50.08.
 - b. You received DATCP cost-share funds combined with cost-share payments from other sources to install and maintain the practice for 10 years, and the combined payments equal the maximum level authorized under ATCP 50.42. This meets the requirements under ATCP 50.08.
 - c. You knowingly and voluntarily accepted cost-share payments less than the maximum amount authorized under ATCP 50.42 to install and maintain the practice for a 10-year period. The 10 years of cost-sharing negotiated for the practices listed above (regardless of the amounts provided) meets the requirements of ATCP 50.08, and obligates a landowner to maintain the practice beyond the term of the contract, without further cost-sharing, to meet the performance standard identified in 2 above.
7. You will be required to sign the cost-share contract and this notice to acknowledge that you have read and understand the obligations to maintain [nutrient management][other listed practice] (strike the one that does not apply) during and after the term of the cost-share contract.